

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DW 09-134

PENNICHUCK EAST UTILITY, INC.

Petition for Authority to Issue Long Term Debt

Order *Nisi* Approving Petition

ORDER NO. 25,041

November 9, 2009

I. BACKGROUND

On July 28, 2009, Pennichuck East Utility, Inc. (PEU) filed a petition, pursuant to RSA 369, for authority to issue long term debt. PEU is a regulated water utility pursuant to RSA 362:2 and 362:4 and serves approximately 5,400 customers in parts of Atkinson, Bow, Chester, Derry, Exeter, Hooksett, Lee, Londonderry, Litchfield, Pelham, Plaistow, Raymond, Sandown, and Windham. PEU seeks to borrow \$6 million with a 20-year term from CoBank, ACB (CoBank). In support of its petition, PEU provided the direct testimony of Thomas C. Leonard, PEU's Chief Financial Officer.

Mr. Leonard states the primary purpose of the financing is to refinance a \$4.5 million floating-rate secured note payable to Bank of America that matures on December 31, 2009.¹ PEU plans to borrow an additional \$1.5 million to fund its on-going capital improvement program and to repay short term borrowings from its parent. PEU will also establish a line of credit of up to \$1.5 million to reduce the Company's reliance on its parent for short-term liquidity. PEU states that, in addition, the line of credit will reduce the risk that its parent is

¹ In *Pennichuck East Utility, Inc.*, Order No. 22,893, 83 NH PUC 222 (1998), the Commission approved the Bank of America debt. The proceeds of the financing were used to purchase the non-Hudson portion of Consumers New Hampshire Water Company. See, *Consumers New Hampshire Water Company*, Order No. 22,792, 82 NH PUC 814 (1997)

unable to provide short-term financing in the event the taking of Pennichuck Water Works, Inc. by eminent domain is consummated.

CoBank is a federally chartered bank under the Farm Credit Act of 1971 and provides loans to eligible borrowers in the rural utility industry. CoBank is a member-owned organization and its borrowing costs are lower than commercial banks. CoBank has indicated that it will provide PEU with a 20-year amortizing loan at an interest rate in the range of 6 to 6.5%. PEU states that if CoBank issues annual patronage refunds, those payments will reduce PEU's interest expense and will thereby reduce the cost of the loan over the long term. Issuance costs will be amortized over the life of the loan.

PEU states that it will invest the additional proceeds in short-term debt securities at an expected interest rate of 2.5%. PEU will use these funds when it needs to repay inter-company borrowings for the \$1.25 million capital expenditures made in 2009 and to finance approximately \$650,000 in capital expenditures in 2010. On September 22, 2009, PEU filed a copy of its Board of Directors' vote to authorize the loan.

On October 7, 2009, Staff recommended that the Commission approve PEU's financing request. Staff stated that PEU's present note has an effective interest rate of 6% and the interest rate of the proposed loan is comparable. Staff stated that PEU sought loans from other banks but none were interested in lending beyond five to seven years. PEU seeks a longer term to match the debt amortization payments with depreciation expense. In discovery, PEU stated that the planned capital improvements include \$516,000 for a radio read program, \$225,000 for three standby generators, \$80,000 for a booster station at the WESCO system in Hooksett, other capital items ranging from \$6,000 to \$50,000, a well, well pump, booster pump, atmospheric

tank, and water main replacements. PEU also stated that it plans to use the funds to repay its inter-company loan which has a balance of approximately \$200,000.

Staff reviewed the impact of the new debt on PEU's capital structure. The new debt, PEU's acquisition of equity in Docket No. 08-052, and PEU's recently declared dividend would ultimately produce a debt-to-equity ratio of about 48:52, which would be acceptable. Staff concluded that the proposed terms of the financing and proposed use of the funds were reasonable. Staff stated that any impact of the proposed financing on customer rates would be negligible.

On October 15, 2009, the Office of the Consumer Advocate (OCA) asked the Commission to notify existing and potential customers of PEU of the petition, afford the customers an opportunity to be heard, and recommended that the Commission issue an order of notice in the docket.

On October 26, 2009, PEU filed a letter stating that the predominant purpose of the financing is to re-finance debt that matures on December 31, 2009, and that it was concerned that any delay in the financing could result in increased debt costs. PEU stated that the proposed interest rate is favorable. PEU requested that an order *nisi* be issued and stated that such an order would be consistent with RSA 369:1.

II. COMMISSION ANALYSIS

Pursuant to the provisions of RSA 369:1, public utilities engaged in business in this State may issue evidence of indebtedness payable more than 12 months after the date thereof only if the Commission finds the proposed issuance to be "consistent with the public good." Analysis of the public good consideration involves looking beyond actual terms of the proposed financing to

the use of the proceeds of those funds and the effect on rates to insure the public good is protected. *See Appeal of Easton*, 125 N.H. 205 (1984).

PEU seeks to borrow up to \$6 million to refinance existing maturing debt, inter-company loans, and to cover the cost of capital expenditures made in 2009 and expected to be made in 2010. PEU has sought debt at a competitive interest rate that contains features such as patronage refunds that may reduce the borrowing costs further over the life of the loan. PEU plans to reinvest additional proceeds in short term securities pending repayment of the inter-company borrowings and this will also reduce the cost of debt. A portion of the funds will be used to acquire standby generators, make improvements at a booster station, install radio read capability, replace mains, and develop a well. Staff Recommendation at 7. Staff has reviewed the financing and states that the impact on customer rates at the time of PEU's next rate case will be negligible. Staff has also reviewed the proposed use of the funds and considers it reasonable.

We have reviewed the proposed terms of the financing as well as PEU's intended use of the funds and find that PEU has demonstrated that the proposed refinancing and projects will enable it to provide better service to its customers at a reasonable cost. We consider the financing and associated capital expenditures to be good utility practice. Accordingly, we conclude that the financing is consistent with the public good and we will approve the amount and purpose of the financing.

OCA has requested that existing and potential customers be notified. We will issue this order on a *nisi* basis to afford interested parties notice and an opportunity to be heard. We further direct PEU to publish a display ad to notify interested parties. We find that this approach provides due process under the circumstances. Based on the filings, there is sufficient evidence to support our conclusion that the terms of the financing and use of the proceeds are consistent

with the public good. Specifically, the proceeds of the financing are for projects we consider to be consistent with good utility practice. Finally, PEU's request involves replacement financing at reasonably similar terms that will have a negligible impact on customer rates.

We note that PEU's existing debt with Bank of America is a secured note and, although the petition did not specifically request a security interest in PEU's real and personal assets, we will authorize such an interest, pursuant to RSA 369:2, if such an interest is needed to secure the new loan. Additionally, we will approve the financing authority requested on the condition that the final terms are not substantially different from those proposed in PEU's filing. If such terms vary significantly, we will require PEU to seek additional Commission approval.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that subject to the effective date below, authority to undertake the financings proposed by PEU, upon the terms and conditions proposed in its petition, including a security interest if needed, is hereby **APPROVED**; and it is

FURTHER ORDERED, that PEU, no later than November 19, 2009 shall cause a copy of this Order *Nisi* to be published once in those newspapers with circulation in those portions of the state where operations are conducted, as well as a summation of this order through the use of a display ad prepared in conjunction with the Commission's Consumer Affairs Division, in the *Union Leader*. Both forms of notice shall also be posted on the Company's website and publication shall be documented by affidavit filed with the Commission on or before December 8, 2009; and it is

FURTHER ORDERED, that all persons interested in responding to this Order *Nisi* be notified that they may submit their comments or file a written request for a hearing which states

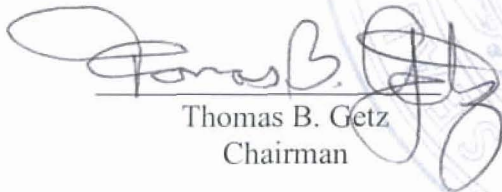
the reason and basis for a hearing no later than November 25, 2009 for the Commission's consideration; and it is

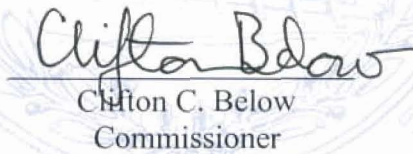
FURTHER ORDERED, that any party interested in responding to such comments or request for hearing shall do so no later than December 1, 2009; and it is

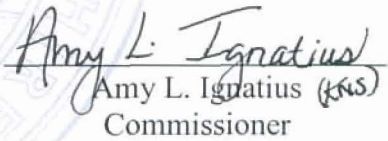
FURTHER ORDERED, that this Order *Nisi* shall be effective December 8, 2009, unless PEU fails to satisfy the publication obligation set forth above or the Commission provides otherwise in a supplemental order issued prior to the effective date; and it is

FURTHER ORDERED, that PEU shall file true copies of the loan documents executed or otherwise finally issued in connection with the closing of the transactions contemplated hereby.

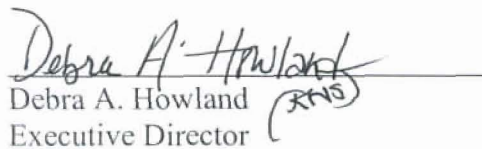
By order of the Public Utilities Commission of New Hampshire this ninth day of November, 2009.


Thomas B. Getz
Chairman


Clifton C. Below
Commissioner


Amy L. Ignatius (RHS)
Commissioner

Attested by:


Debra A. Howland (RHS)
Executive Director